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10/573,103	07/05/2007	Emile Stephan	P1918US	8956
8968 7590 08/12/2009 DRINKER BIDDLE & REATH LLP ATTN: PATENT DOCKET DEPT. 191 N. WACKER DRIVE, SUITE 3700 CHICAGO, IL 60606				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/573,103

**Applicant(s)**

STEPHAN ET AL.

**Examiner**

Tam Phan

**Art Unit**

2458

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 05 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/CIS)  
Paper No(s)/Mail Date 07/28/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 1-3, 6-13** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Claim 1** Line 10 reciting “**making it possible to subsequently send an ordered string of information corresponding to said template,**” renders the claim indefinite. It is unclear how construction of a template would make it possible to send an ordered string of information. Additionally, as recited, the construction of the template only makes it ‘possible’ to send information, but does not positively state sending of an ordered string. **Claims 6 and 11** are rejected upon similar grounds. **Claims 2-3, 7-10, and 12-13** are rejected for depending on parent **Claim 1, 6, and 11**, respectively.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claims 1-5 and 14-16** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. **Claim 1** is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method including steps of generating a pair of words and constructing a template comprising an ordered set of pair of words to be sent, is broad enough that the claim could be completely performed by a human at a machine. A human can look at a specification and create a spread sheet (template) with entries (pairs of words) with a name and length value, and send (by mail) information corresponding to the spreadsheet. **Claim 4** is similarly rejected. **Claims 2 and 3** are rejected for depending on parent **Claim 1**.

7. **Claim 5**, as recited in Line 1 "**A signal composed...**", is nonstatutory subject matter. *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007)(slip. op. at 18)

discloses "A transitory, propagating signal like Nuijen's is not a 'process, machine, manufacture, or composition of matter.'" Thus, such a signal cannot be patentable subject matter and thus rejected under 35 U.S.C. 101. (MPEP 2106)

8. **Claim 14** reciting a **"supervisor module"** with **"means designed for"** appears to be software per se. As disclosed in Para [0177] the supervisor module 87 is hosted in the controller 90 of the measurement system. Accordingly, the supervisor module may be implemented as logic (software) coupled to a processor, wherein the means may be interpreted as logic (software) and the claim is directed to a mere arrangement of software. Software is functional descriptive material and nonstatutory subject matter unless embedded in a computer readable medium. (MPEP 2106)

9. **Claim 15** reciting an **"exportation module"** with **"means for transmitting"** appears to be software per se. As disclosed in Para [0179] the system 91 comprises a module 88 for exporting templates. Accordingly, the exportation module may be implemented as logic (software) coupled to a processor, wherein the means may be interpreted as logic (software) and the claim is directed to a mere arrangement of software. Software is functional descriptive material and nonstatutory subject matter unless embedded in a computer readable medium. (MPEP 2106)

10. **Claim 16** is rejected for depending on parent **Claim 15**.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 1-8 and 11-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wiles et al.** (US2002/0078261), in view of **Menzies et al.** (US2002/0091809).

13. **(Claim 1)** Wiles teaches a method, comprising the steps of:

14. **[a] generating on the basis of said specification for each object, a pair of words for which the value of first word pertains to an indication of the object and the value of second word pertains to an information length of the object** (Wiles [0031,36] discloses the process wherein an Information Database Plus (IDB+) component 10 (translator module), based on a MIB file 31, IDBGen utility 18 and IDB+ configuration file, generates an IDB+ module 16 with a Module Source file 33 and Module Include file 34. The generated Module Source file 33 includes a Translation table 24, Object Descriptor table 22, and Object ID table 23. Wiles [0028] discloses the generated Object Descriptor table 22 has a predefined data structure (word) including

information about each data object 17, such as local ID/type of data object 17 (value of first word indication of the object) and valid range of values/size of the data object 17 (value of second word information length of the object);

15. Wiles [0014] discloses an exemplary communication system i.e. LAN, WANS, Internet, wireless networks etc. Wiles [0028-29] discloses the Object Descriptor table with a predefined structure including information about each data object and the Object ID table includes a structure type (e.g. SNMP) for reach object having an Object ID prefix and a particular length, and an index name array wherein the Object ID prefix designates the class of an object, and the index name array includes the name strings for the indices of the MIB table for which the data object resides.

16. Wiles however does not expressly disclose **[b] constructing template comprising an ordered set of pairs of words generated and an identifier of said template, making it possible to subsequently send an ordered string of information corresponding to said template.** Menzies [0025,28-32] discloses a distributive computing environment utilizing LAN, WANS, the Internet etc, over underlying protocols such as TCP. Menzies [0040,42, 45] discloses the meta-schema objects of a Common Information Model (CIM) are components used to model a managed object, where the objects are classes, instances, properties, and qualifiers. Classes are templates for manageable objects. A class is a named (identifier of said template), structured data type with property fields (words). Menzies [0063-67]

discloses SNMP MIB mapping where each MIB is extracted from a repository and translated by a SMI compiler into a CIM object class 90 (constructing template), which is then provided to the CIM Object Manager (CIMOM, i.e. server as disclosed by Menzies [0033-34]). In combination, Wiles and Menzies make it is possible to send an ordered string of information corresponding to a template as communication over a distributed wired/wireless networks utilize signals over a transmission medium, and as it is known in the art the transmission of data is achieved through ordered strings of binary numbers representative of the data.

17. Wiles and Menzies are analogous in the field of object management and thus combinable. Therein it would have been obvious to one of ordinary skill in the art at the time of the invention enhance Wiles' implementation of generating pairs of words pertaining to an object's identification and information length of the object with Menzie's disclosure of translating object data into named class template with property fields for the purpose of having a named template consisting of pairs of words representative of object properties making it possible to send information corresponding to the template with the motivation being to simplify the complexity of MIB tree-based structures by mapping the MIB objects into abstract user-intuitive CIM class, as disclosed by Menzies [0006].

18. **(Claim 2)** reference to **Claim 1: further comprising the steps of:**

- 19. [a] traversing a tree of the administration information base each node of which is associated with an object** (Menzie's [0064] discloses each network device (node) provides information according to the SNMP standard for managing devices and for representing management data via MIB, which are complex tree based structures. Menzie's [0070] discloses the mapping process in the SMI compiler for processing the MIB tree structure which determines the type of each MIB object. Menzie's [0073] discloses detection of the end of an enumerated object, then looping back as necessary to repeat the mapping process for the other objects of the MIB (traversing tree of the management information base). Additionally, Menzie's [0078,88] discloses a correction mechanism for creating a range table which corresponds to an ordered table of OID ranges in a MIB group/subgroup, and traversing the tree to perform such correlation);
- 20. [b] testing at each node whether the object is of scalar or table type** (Menzie's [0070] MIB objects are enumerated and then determined whether the type is scalar or table);
- 21. [c] constructing the template by appending the word pair generated to the template if the object is of scalar type** (Menzie's [0071] if the MIB object is determined scalar, it is translated into a CIM class wherein the object name and properties are placed in the CIM class).;

**22. [d] constructing another so-called table template if the object is of table type for the objects of the table** (Menzies [0072] if the object is determined to be a table type, the object is translated into a CIM keyed class that is capable of describing more than one instance).

**23. (Claim 3) reference to Claim 1:**

**24. further comprising the step of constructing a configuration template comprising the pairs of words generated for objects with modifiable access** (Menzies [0074] discloses mapping of TRAP/NOTIFICATION type macro definitions corresponding to event notification. An event is a notification of a change in configuration or state of a management entity. The TRAP/NOTIFICATION type macros are mapped to additional CIM classes. Menzies [0048-49] discloses the use of qualifiers in CIM classes which are modifiers applied to a class definition, an instance or a property, and may be user-defined. Menzies [0071] discloses CIM qualifiers are used such as to correspond to an object's object type and access information (pair of words generated for modifiable access). Additionally, Wiles [0034,36] discloses the use of an IDB configuration file that is created for an MIB file, which is a configuration control file that may be customized for its associated MIB file. The configuration file contains a series of configuration parameters. In combination, Wiles and Menzies disclose construction of a configuration template containing parameters/words associated with objects with modifiable access information).

25. **Claims 4-6 and 11** are rejected upon the similar grounds as **Claim 1**. See **Claim 1** for disclosure of rejection.

26. **Claims 7 and 12** are rejected upon similar grounds as **Claim 2**. See **Claim 2** for disclosure of rejection.

27. **Claims 8 and 13** are rejected upon similar grounds as **Claim 3**. See **Claim 3** for disclosure of rejection.

28. **Claims 9, 10 and 14-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wiles** et al. (US2002/0078261), **Menzies** et al. (US2002/0091809), and in further view of **Emaru** et al. (US2005/0021547)

29. **(Claim 9)** reference to **Claim 6**:

30. Wiles [0016-17] discloses producer components in a distributed environment which handles requests from consumer components. Wiles 0050-51] discloses a dispatch interface component of the IDB+ component which receives the requests and retrieves and provides the requested data associated with an object. Menzies [0033,65] discloses communication of CIM classes/templates to the CIMOM server.

31. Wiles and Menzies however do not expressly disclose **a supervisor module designed to collect measurements and an exportation module designed to transmit at least one ticket of data pertaining to these measurements to a server.**

Emaru discloses performance monitoring in a distributed system. Emaru [0034-36] discloses collectors (supervisor module) 131,132 which collects performance data and sends the collected data to the manager 130 (server). Emaru [0043-45,50] discloses the collectors supervise measurement target objects based on object ID. When messages are sent from one object to another, performance metrics are collected by the collectors and added to a collected data-list 501 (ticket data) which is transmitted to the manager. The contents of collected data-list 501 contain references to object IDs and their performance metrics. The process of transmitting of the collected data-list 501 generated by the collectors to the manager (server) implies logic (exportation module) designed to transmit the collected data to a server.

32. Wiles, Menzies and Emaru are analogous in the field of distributed processing and thus combinable. Therein it would have been obvious to one of ordinary skill in the art at the time of the invention to enhance Wiles-Menzies' implementation of generating pairs of words and templates indicative of objects and providing them to a server, which Emaru's disclosure of a supervisor module which collects measurements associated with objects and an implicit exportation module which transmits a collected data-list to a server for the purpose of collecting and providing measurements regarding transmission

of objects and templates to a server with the motivation being to provide performance monitoring of distributed systems regarding processing time and latency so as to narrow down and minimize the bottleneck of performance to increase efficiency.

**33. (Claim 10) reference to Claim 9:**

**34. wherein said exportation module is designed to transmit:**

**35. a data ticket comprising a reference to a template, preceded, in the transmission, by the template referenced in said data ticket (Menzies [0065]**

discloses providing the named CIM object class (template) to the CIMOM server.

Emaru [0044] teaches the collected data-list (data ticket) is generated after transmission of a message. Emaru [Fig 5-6, 0045-46] discloses the collected data-list 501 contains references to the object ID of which performance is measured. In combination, Menzies and Emaru disclose a collected data-list (data ticket) containing a reference to a object ID/class/template, proceeded in the transmission by the named CIM object class sent to the CIMOM server).

**36. Claims 14 and 15 are rejected upon similar grounds as Claim 9. See Claim 9** for disclosure of rejection.

37. **Claim 16** is rejected upon similar grounds as **Claim 10**. See **Claim 10** for disclosure of rejection.

### ***Conclusion***

#### ***Claims 1-16 are rejected.***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Martinot et al. (US20040105394) – Measuring information within telecommunications network.
- Reyna (US20040160464) – Mapping of management information base objects.
- Schwartz et al. (US20020133581) – Device management system, export module.
- Lakis (Patent 5864865) – MIB viewer, determine scalar/table, create scalar/table objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Phan whose telephone number is (571)270-7644. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Avellino can be reached on 571-272-3905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
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